

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)	
)	
MELISSA ANNE NICHOLSON,)	CASE NO. 05-68150 JPK
)	Chapter 13
Debtor.)	

ORDER DISMISSING CASE

This case was initiated as a Chapter 7 case by voluntary petition filed on October 14, 2005. On January 13, 2006, the debtor's counsel David Dabertin filed, in consecutive order, a motion to convert the debtor's Chapter 7 case to a case under Chapter 13, followed by a motion to dismiss the debtor's Chapter 13 case – apparently assuming the case would be converted automatically under 11 U.S.C. § 706(a). However, the debtor does not have an absolute right to convert a Chapter 7 case to a case under Chapter 13; *In re Kuhn*, 322 B.R. 377 (Bankr. N.D.Ind. 2005). The Court noticed the debtor's motion to convert her case to all creditors and parties-in-interest by order entered on January 19, 2006 as docket record entry #7. When no creditor or party-in-interest objected, the Court entered an order converting the case to a case under Chapter 13 on February 8, 2006. The motion to dismiss the Chapter 13 case, filed on January 13, 2006, remained before the Court, and as expressly provided by 11 U.S.C. § 1307(b), the debtor does not have an absolute right to dismiss a Chapter 13 case which arises from conversion of the original case from a case under Chapter 7 to Chapter 13. The Court again provided notice to all creditors and parties-in-interest by order entered on February 9, 2006, as docket record entry #11. In apparent response to this notice, the Court received an undated letter apparently under the signature of Melissa Nicholson, which clouds the record as to the proper course of proceedings in this case; the letter was docketed as docket record entry #16, on February 15, 2006. In particular, the letter appears to refer to a prior Chapter 7 bankruptcy case in which the debtor received a discharge in 2000, case

number 99-64010 filed on November 29, 1999. The debtor received a discharge in that Chapter 7 case, which was commenced within the six year period prior to the date of filing of this case on October 14, 2005. By operation of 11 U.S.C. § 727(a)(8), the debtor would not be entitled to receive a discharge if this case were to be reconverted to a Chapter 7 case, thus the motion to dismiss the case as a chapter 13 case should be granted.

IT IS THEREFORE ORDERED :

1. That if the Plan of the Debtor is not confirmed, the Trustee and all parties in interest are hereby allowed leave of Court of twenty (20) days from the date of this Order to apply to this Court pursuant to §503(b) for any actual and necessary expenses of administration pursuant to §1326(a)(2). If the Plan of the Debtor has been confirmed the Trustee shall distribute any payment by Debtor in accordance with the Plan pursuant to §1326(a)(2).
2. That the Trustee is directed to order his final report and account, and he is relieved of his trust and is discharged from his duties.
3. That the bond of said Trustee be and it hereby is canceled, and that the surety or sureties thereon be and they hereby are released from further liability thereunder, except any liability which may have accrued during the time such bond was in effect.
4. That if there is an income deduction order pending, the employer is hereby ordered to terminate deductions.
5. That the case shall be terminated and closed after completion of the foregoing.

Dated at Hammond, Indiana on March 17, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor
Trustee, US Trustee
All Creditors
All Parties in interest